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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,728	03/22/2005	Ralf Jakobi	PC10541US	3723
23122	7590	03/23/2007		
RATNERPRESTIA P O BOX 980 VALLEY FORGE, PA 19482-0980			EXAMINER JOHNSON, MATTHEW A	
			ART UNIT	PAPER NUMBER
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SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/23/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/528,728	Applicant(s) JAKOBI ET AL.	
	Examiner Matthew Johnson	Art Unit 3682	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-30 and 39 is/are pending in the application.
- 4a) Of the above claim(s) 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-23, 25-30 and 39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 March 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claim 24 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/21/2006. The examiner notes that claim 24 recites a separate guide rod (41), a swiveling lever (42) and a piston rod (40). After further review, it is noted that these features are not shown in the elected Species I-Figures 1 and 3. The specification describes these features as part of the embodiment of Figure 6 (see Brief Description of the Drawings and page 15, second paragraph). Claim 24 is hereby withdrawn from further consideration.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "pedal lever of a clutch device" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet,

and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

3. Claim 26 is objected to because of the following informalities: the term "can be arranged" renders the term "optionally" repetitive in form, and it appears to be unnecessary. The examiner suggests deleting the term "optionally" from the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claim 26 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 26 recites the limitation "the protrusion" in line 2. There is insufficient antecedent basis for this limitation in the claim. The examiner notes that claim 26 is dependent from claim 20, which does not recite a protrusion, but instead recites an "extension", which was deleted from the claim. Paragraph [0050] of the specification refers to the extension as being equivalent to the protrusion (17) in line 4. Therefore, the lack of antecedent basis of claim 26 was introduced by the amendment made on 1/08/2007.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 20-23, 25-27,29,30,39 are rejected under 35 U.S.C. 102(e) as being anticipated by Fukase et al. (USP-6,520,045).

Re clms 20,26: Fukase discloses an adjustable pedal device (10) for a motor vehicle comprising a(n):

- Holder (14) fixed to a vehicle body

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- Mounting support (30) in the holder (14), having a top section (near 48), a bottom section (near 32) and a midsection (near 16) between the top and bottom sections, the mounting support being pivoted about a first axis (16) at the midsection, and the top and bottom sections being free to rotate about the first axis (see Figures 1A & 1B)
- First pedal lever (34) pivotally mounted in the mounting support (30) about a second axis (32)
- Control member (40)
- Second pedal lever (60) pivotally mounted on the bottom section of the mounting support (52, Figure 2) so as to be rotatable about a fourth axis (56)
- Protrusion (68, C4 L13-23 & C11 L50-53)

Re clm 21: Fukase discloses a pedal device (10) wherein the control member (40) with its first end mounted in the pedal lever so as to be rotatable about a third axis (36), and wherein a second end of the control member is tiltably mounted (via 28) on a brake booster (24).

Re clm 22: Fukase discloses a pedal device (10) wherein the second axis (32) and the fourth axis (66) are offset in relation to each other (see Figure 3), and wherein the fourth axis (66) is arranged below the first axis (16), and wherein the first axis (16) is arranged below the second axis (32) (Note: Fukase discloses various arrangements regarding the placement of the different axis, modes (1)-(6), see specifically C8 L22-29 & C13 L12-14)

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Re clms 23 & 30: Fukase discloses a pedal device (10) wherein the first pedal (34) is used for actuation of a brake booster or master cylinder of a brake system (24, C9 L16-27), and the second pedal lever (60) serves for the engine speed control (C3 L63-64 & C11 L57-67) with the lower free ends of the pedal levers being furnished with pedal plates (22 and 58).

Re clm 25: Fukase discloses a pedal device (10) wherein the holder (14) is mounted to a splashboard of the vehicle (12).

Re clm 27: Fukase discloses a pedal device (10) wherein the mounting support (30) is swiveled by means of an electric drive (44), said drive being configured as an electric motor (C10 L16) equipped with a gear (46) and being rotatably anchored (50) at the holder (14) (see Figure 2).

Re clm 29: Fukase discloses a pedal device (10) wherein a pedal lever of a clutch device is additionally pivoted in the mounting support (C3 L58-65 & C4 L13-23).

Re clm 39: Fukase discloses a pedal device (10) wherein the bottom section (near 32) of the mounting support (30) comprises an integral projection (32) of unitary construction with the mounting support, said second pedal lever being directly mounted to the projection in a pivotal connection (52). (Note: Merriam Webster's Collegiate Dictionary Tenth Edition provides the following definitions of integral: 1a: essential to completeness; c: formed as a unit with another part)

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fukase et al. (USP-6,520,045) in view of Smith (USP-3,691,868).

Re clm 28: Fukase discloses all of the claim limitations, as stated above, but does not disclose the first axis lies on the point of intersection of the mid-verticals of two distances with the first distance being defined by the displacement of the second axis during the adjustment and the second distance being defined by the displacement of the fourth axis during the adjustment.

Smith teaches that the first axis (87) lies on the point of intersection of the mid-verticals of two distances with the first distance being defined by the displacement of the second axis (37) during the adjustment and the second distance being defined by the displacement of the fourth axis (35) during the adjustment for the purpose of permitting movement of the carrier relative to the support (Column 2, lines 46-47).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the device of Fukase and employ an arrangement where the first axis lies on the point of intersection of the mid-verticals of two distances with the first distance being defined by the displacement of the second axis during the adjustment and the second distance being defined by the displacement of the fourth

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axis during the adjustment, as taught by Smith, for the purpose of permitting movement of the carrier relative to the support.

Response to Arguments

10. Applicant's arguments with respect to claim 20 have been considered but are moot in view of the new ground(s) of rejection.

The applicant argues that Fukase discloses a brake pedal (34) mounted on a stationary bracket (18), and an accelerator pedal (60) on a completely separate holding member (54). The applicant further argues that no swiveling mounting support is shown with a first pedal mounted in it.

In response, the examiner disagrees with the applicant's remarks. As described above, Fukase discloses a first pedal lever (34) that is mounted in a mounting support (30; C9 L43-46). Additionally, the mounting support (30) is capable of swiveling (C9 L58-60). Claim 20 recites, "a second pedal lever is pivotally mounted on the bottom section of the mounting support, so as to be rotatable about a fourth axis". Fukase discloses that the second pedal lever (60) is pivotally mounted (via holder 54) on the bottom section (near 32) of the mounting support (30), so as to be rotatable about a fourth axis (56; C11 L34-42), and further discloses that the second pedal lever can be mounted in the mounting support (30; C11 L50-53).

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew Johnson whose telephone number is 571-272-7944. The examiner can normally be reached on Monday - Friday 8:30a.m. - 5:00p.m. EST.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJ

MJ 3/21/2007



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